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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/738,431      | 12/14/2000  | Richard S. Ginn      | 258/2999            | 1012             |

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EXAMINER

NERBUN, PETER P

ART UNIT

PAPER NUMBER

3765

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/738,431

Applicant(s)

GINN ET AL.

Examiner

Peter P Nerbun

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3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 39-81 is/are pending in the application.
- 4a) Of the above claim(s) 41-68 and 72-81 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39,40 and 69-71 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3,7-9,10 1,12 6) ☐ Other:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 39, 40, and 69-71 are rejected under 35 U.S.C. 102(b) as being anticipated by Tiefenbrun, cited on a PTO-1449 (paper no. 12). The patent to Tiefenbrun discloses an apparatus for sealing a passage through tissue, comprising an elongate shaft 22, Fig. 10 having a proximal end and a distal end; and a plug member 52, Fig. 9 disposed on the distal end of the elongate shaft (note that the shaft 22 is inserted within recess 60, Fig. 9 as described in col. 4, lines 38-39), the plug member comprising a helical thread 56 on its outer surface, the elongate shaft having a cross-section that is substantially smaller than a cross-section of the plug member.

Claims 41-68 and 72-81 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 13. It is noted that applicant states that he believes that claims 39-52, 56-59, 69-71, and 80 read upon the elected species. The examiner disagrees with the assertion that claims 41-52, 56-59, and 80 read upon the elected species illustrated in Fig. 3. In claim 41, lines 1-2, applicant recites the plug member as comprising a cavity in its distal end. The description of Fig. 3 on page 13, lines 16-22 and page 14, lines 1-22, and page 15, lines 1-2 of applicant's specification provides no disclosure to indicate that the plug comprises a cavity in its distal end. Claim 44 recites at least one of a hemostasis-

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promoting material and an infection-resistant material secured to a distal end of the plug member. Claim 45 recites the plug member as being releasable from the elongate shaft. Claim 56 recites a plug member formed from a bioabsorbable material. Claim 80 recites a distal end of an elongate member as having a connector thereon and a plug member releasably secured to the distal end of the elongate member by the connector. The description on page 13, lines 16-22 and page 14, lines 1-22, and page 15, lines 1-2 of applicant's specification provides no disclosure to support the presence of any of these features in the Fig. 3 embodiment. Claims 46-52 and 57-59 depend on at least one of the aforementioned claims 45 and 56.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter P Nerbun whose telephone number is 703-308-0955. The examiner can normally be reached on M-F (1st Week) M-Th (2d Week).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J Calvert can be reached on 703-305-1025. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0758 for regular communications and - for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is

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703-308-0861.

A handwritten signature in black ink, appearing to read "Peter Nerbun". The signature is fluid and cursive, with the first name "Peter" and last name "Nerbun" clearly distinguishable.

Peter Nerbun  
Primary Examiner

Peter Nerbun  
December 17, 2002